



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No: 4761-00
21 December 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 15 August 1988 for four years as an SN (E-3). You completed recruit training and Mess Specialist Class "A" School, and were assigned to the Basic Enlisted Submarine School. The medical record reflects that on 24 March 1989 a medical board found you medically unfit due to chronic otitis media and recommended separation by reason of physical disability. You were advised of findings and recommendation of the medical board and requested discharge by reason of physical disability. On 4 April 1989, the commanding officer was notified that you were considered disabled by reason of a condition existing prior to service and you had requested discharge. However, on or about 14 April 1989, you were placed on report for dereliction of duty and larceny.

On 23 May 1989, you received nonjudicial punishment (NJP) for dereliction of duty in that you failed to remain on your post; larceny of a calculator ring, an alarm clock, a box of laundry

detergent, a cable TV box, an iron, a watch, a jar filled with pennies, and a pair of shoes, the total value of about \$350; and unlawful entry. Punishment imposed consisted of reduction in rate to MSSA (E-2), forfeitures of \$200 per month for two months, and 25 days of restriction and extra duty.

On 13 June 1989 you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. You were advised of your procedural rights, declined to consult with legal counsel, and waived your right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended separation under other than honorable conditions by reason of misconduct. He noted that while you were on duty as a fire and security watch, you entered the barracks manager's office and stole several items valued at approximately \$350. Your actions were a clear departure from the conduct expected of junior personnel. On 23 July 1989, the Commander, Naval Military Personnel Command directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. You were so discharged on 10 August 1989.

The Naval Discharge Review Board denied your request for upgrade of discharge on 27 January 1997.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity at the time of your service, the fact that you completed your college education, sheriff's records check attesting to good post-service conduct, and the fact that it has been more than 11 years since you were discharged. The Board noted your explanation of the circumstances surrounding the larceny and contention that you were not guilty. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given the seriousness of the offense for which you received NJP. Your contention and claims are neither supported by the evidence of record nor by any evidence submitted in support of your application. Further, the NJP evidence that was considered in your case no longer exists since it is retained for only two years. Absent such evidence, a presumption exists that the commanding officer did not abuse his discretion in imposing NJP. The Board also noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. The fact you were awaiting a medical discharge did not prohibit the commanding officer from discharging you for misconduct. Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct. The Board

concluded that the discharge and assigned reenlistment code were proper and no changes are warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director